

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

TUMEY L.L.P. and TOD T. TUMEY,

Plaintiffs,

v.

MYCROFT AI INC.,  
JOSHUA MONTGOMERY, and  
MICHAEL LEWIS

Defendants.

Case No. 21-0113-CV-W-BP

**PLAINTIFFS' EMERGENCY MOTION TO AMEND TRIAL DATE**

Plaintiffs Tumey L.L.P. and Tod T. Tumey (“Plaintiffs”) hereby file this Emergency Motion to Amend the Trial Date in this case as well as certain pretrial deadlines and would respectfully show the Court as follows:

Plaintiffs are currently represented by David K. Wooten of Tumey L.L.P. and Brian Madden of Wagstaff & Cartmell. Mr. Madden has been acting as Plaintiffs’ local counsel in this case. Recently, Eric M. Adams, also of Tumey L.L.P., withdrew from representing Plaintiffs because of the strong likelihood that he will be testifying as a witness in this case. *See* Docket Entry 217. Mr. Adams was identified by Defendants as someone who “must lay the proper foundation” for purported testimony by Mr. Chilton Webb. *See* Docket Entry 212 at 12. In addition, Defendants have recently suggested that Plaintiffs’ counsel David K. Wooten is a necessary witness with respect to firm documents for this case that were destroyed in cyberattacks after Mr. Wooten appeared in this matter (unfortunately an unavoidable situation not under Plaintiffs’ control). *See* Docket Entry 222 at 3.

Given Mr. Adams recent withdrawal, and the fact that Mr. Madden has only acted as local counsel, Plaintiffs had already been seeking additional counsel for the trial of this case, which is currently set for November 28, 2022. Ex. 1, Tumey Declaration at ¶ 2. In fact, Plaintiff Tod Tumey had extensive discussions with one law firm about representing him and Tumey L.L.P. at trial. *Id.* After weeks where it appeared that this attorney would agree to represent Plaintiffs, Mr. Tumey was informed just recently that the attorney could not do so because the partnership of his firm was worried that they, as well as their families, would all be the targets of cyberattacks, threats, and other types of attacks. *Id.* Those talks ended late last week. *Id.* After those discussions ended, Mr. Tumey immediately started interviewing additional attorneys about the possibility of representing them at the trial of this case. *Id.* However, Plaintiffs have encountered continuing reluctance by potential counsel that have made hiring them difficult. *Id.*

The attorneys with whom Plaintiffs have discussed possible trial representation have expressed grave concerns that the cyberattacks and other attacks, threats, and harassment levied against Plaintiffs and some of their attorneys may also be levied against them and their own families if they take on this case. Tumey Declaration at ¶ 3. Unfortunately, this is not a new problem for Plaintiffs in this case. *Id.* Plaintiffs are obligated, of course, to explain the facts of this case to prospective attorneys, which includes close to three years of relentless threats, cyberattacks, other types of attacks, and harassment. *Id.* Further, Plaintiffs feel obligated to inform potential counsel about even more recent attacks. *Id.* For example, in immediate conjunction with the recent mediation activities between the parties, these attacks have included the hacking of Mr. Tumey's son's personal computer, threats and cyberattacks against Mr. Tumey's wife, an attempt to access Tumey L.L.P.'s phone and Wi-Fi system, as well as email-based cyberattacks against Mr. Adams, immediately following his submission of Plaintiffs' settlement offer as ordered by Magistrate

Judge Jill A. Morris. *Id.* The attorneys that Plaintiffs have talked to have expressed serious concerns that they and their families will be subject to the same attacks if they agree to represent Plaintiffs. *Id.*

Given this difficulty, Plaintiffs seek a continuance of the trial setting in this case, which is currently set for November 28, 2022. *See* Amended Scheduling Order [Doc. 168]. Plaintiffs also seek a continuance of the pretrial conference currently set for November 17, 2022, *see id.*, as well as the following deadlines linked to the pretrial conference setting: stipulation of uncontested facts, witness lists, exhibit lists, stipulations as to admissibility of evidence, objections to deposition designations, jury instructions, trial brief, and voir dire questions. *See id.* Further, the parties have already filed motions in limine, and Plaintiffs suggest that the parties timely respond to motions in limine by the current deadline.

Plaintiffs feel that they should be able to retain trial counsel that will be ready for trial as early as mid-January 2023. Therefore, Plaintiffs ask the Court to reset the trial of this case for sometime after mid-January 2023, and then set the pretrial conference date accordingly. Plaintiffs have shown good cause for this continuance request. A resetting of the pretrial conference and trial of this case will not unfairly prejudice Defendants.

WHEREFORE, Plaintiffs respectfully request that the Court approve this Motion to Amend the Trial Date and enter an order amending the deadlines contained in the Amended Scheduling and Trial Order [Doc. 168] as stated herein.

Dated: November 2, 2022

Respectfully Submitted,

**TUMEY L.L.P.**

/s/ David K. Wooten  
David K. Wooten (TX Bar #24033477)  
*(admitted pro hac vice)*  
5177 Richmond Avenue, Suite 1188  
Houston, Texas 77056  
(713) 622-7005  
(713) 622-0220 *fax*  
[dwooten@tumeyllp.com](mailto:dwooten@tumeyllp.com)

**WAGSTAFF & CARTMELL LLP**

Brian J. Madden (MO Bar #40637)  
4740 Grand Avenue, Suite 300  
Kansas City, Missouri 64112  
(816) 701-1100  
(816) 531-2372 *fax*  
[bmadden@wcllp.com](mailto:bmadden@wcllp.com)

ATTORNEYS FOR PLAINTIFFS  
TUMEY L.L.P. AND TOD T. TUMEY

## **CERTIFICATE OF CONFERENCE**

I hereby certify that on November 2, 2022, I contacted David Marcus (counsel for Defendants Michael Lewis and Mycroft AI Inc.) and Bill Horn (counsel for Defendant Joshua Montgomery) via email regarding Plaintiffs' proposed motion for continuance. Defendants stated that they are opposed to this Motion.

/s/ David K. Wooten  
David K. Wooten

## **CERTIFICATE OF SERVICE**

I hereby certify that on the 2nd day of November, 2022, the above and foregoing was served via ECF on all counsel of record.

/s/ David K. Wooten  
David K. Wooten